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Aliu, Armando

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Özsunay, Ergun. "European Union Law and Turkey–EU Relations." (1st ed.) Vedat Press, Istanbul, Turkey, 2015, 480 pp., Price: 45,00 TL, ISBN: 9786054823581.

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Book Review:

Özsüñay, Ergun. "European Union Law and Turkey-EU Relations." (1st ed.) Vedat Press, Istanbul, Turkey, 2015, 480 pp., Price: 45,00 TL, ISBN: 9786054823581.¹

Ermeritus Prof. Dr. Ergun Özsüñay is one of the most distinguished, gifted, productive and remarkable law Scholars in Turkey.² His influential scientific works shed lights on researchers who want to better conceive basic principles and insights of EU law.

The author was an alumnus of Harvard Law School (the USA), Faculté Internationale de Droit Comparé (France), Istanbul University, Faculty of Law (Turkey) and Max-Planck-Institut für ausländisches und internationales Privatrecht (Germany). He had affiliations and various memberships at the International Academy of Comparative Law, International Association of Legal Science, International Institute for the Unification of Private Law, Deutsche Gesellschaft für Rechtsvergleichung, Association of Procedural Law, Center of American and International Law, and the United Nations Commission on International Trade Law (UNCITRAL). Since 2005, he has been working at Istanbul Kültür University and Fordham University, Faculty of Law in New York.³

The author designed his work in a course-book format and used plain and precise language as a writing style. He investigated EU law literature that comprises the scientific materials written in English and German languages. He added merely a few works written in French for better clarifying some descriptions and contextualisation.

A crucial and meaningful message of the author by means of referring to the famous quotation of Theodor Mommsen was quite appealing.⁴ The first chapter of the book deals with the philosophical foundations and historical integration of the European Union. The author included a limited knowledge of "Pre-1945 European Integration" and therefore commenced with the distinction amongst the approaches of "philosophy of law" and "positive and/or dogmatic law (*Jus Positivum*)."⁵ The positive law does not examine idealistic expressions and assertions. In general, it consists of legal rules and implementations. In this book, the foundations of EU law were refined from idealistic philosophical thoughts of European Enlightenment.⁵

¹ Original titel of the book is "Avrupa Birliği Hukuku ve Türkiye-AB İlişkileri."

² In 2011, I read some of Prof. Özsüñay's impressive scientific works that are relevant to comparative law when I was an investigator (*Schumpeter Research Group II – Judicial Review and Constitutional Reasoning Project*) at Max-Planck-Institute for Comparative Public Law and International Law in Heidelberg (Germany).

³ The Curriculum Vitae of Prof. Özsüñay is retrieved from: <[directlink](#)>.

⁴ "As the Hesperides tree, the golden apples of the tree of science are just for the one who is able to pick up them; these can be shown to others but not given (*In German: Der Baum der Wissenschaft trägt wie der der Hesperiden seine goldenen Äpfel nur für den, der sie sich selbst bricht: anderen kann man sie zeigen, aber nicht geben.*)." Mommsen, T. (1984). Die Schweiz in römischer Zeit. In: Mittheilungen der Zürcherischen Gesellschaft für vaterländische Alterthümer, XVIII, Zürich: Meyer und Zeller Verlag. Retrieved from: <[directlink](#)>.

⁵ "Natural law theory takes legal theory out of the realm of positive legal norms and into the realm of ethico-political postulates. In natural law theory, the law is seen as necessarily subject to moral constraints; in the empirico-positivist theory, it is seen as part of the world of fact or nature."⁵ Admittedly, the author was seemingly inspired by Kelsen's arguments (e.g. the Pure Theory of Law [*Reine Rechtslehre*] that syncratises separability thesis & normativity thesis) and refined his work from philosophical, sociological and other social science

Actually, the author has a complete awareness of the pedagogical formation of "EU Law" courses that are tightly bound on either philosophy of law or positive law perspectives in Europe. Thus, he preferred to better structure, describe and embed normative dimensions of EU law. In essence, he revealed abstract knowledge, basic and universally valid adequate clarifications through focussing theoretically on concepts of EU law, avoiding from ideological or personal positioning (except Chapter 11: Turkey – EU Relations), and emphasising fundamental structures and techniques of systems of EU law. Likewise, this approach intends to illuminate people who are interested in EU law regarding the purity of EU law from a holistic viewpoint, and indeed explaining the EU law itself in an uncomplicated manner.

However, a recent interview of Jürgen Habermas (carried out by Armin von Bogdandy) perfectly indicates the contrast amongst "philosophy/sociology-based legal interpretations" and "strictly positive law interpretations."⁶ In the light of these clarifications, the "general theory of EU law approach"⁷ may ensure a consensus or synthesis for normative considerations and law arguments. In this way, it can be put forward that a Scholar without a degree in EU law has the right to speak about legal and normative issues not as a qualified EU law expert but as a rational, conscious, and gentle scientist who should like to contribute to the interdisciplinary issues and matters of EU law. If the EU law education is improved with taking into account "the general theory of EU law approach", law discussions can be realised and sustained by non-EU law experts and fit in the interdisciplinary frameworks.

Another aspect of this concise work is the nexus between civil law legal system (i.e. the primary source of law is legislation which is compiled into comprehensive codes) versus common law legal system (i.e. a recognised source of law is found in the written legal opinions of judges, judicial opinions, verdicts, case law). The difference of sources of civil law legal system (i.e. legislation compiled into structured, comprehensive codes, methodical approach to codes, importance of commentaries by legal scholars) and common law legal system (i.e. judicial opinion a recognised source, concept of precedent/stare decisis, case law analysis crucial, different meaning of a code) ensures varying interpretations of EU law.⁸ The author is perfectly conscious of the fact that these different approaches are generally in the centre of contemporary ongoing debates in the EU law discussion platforms.

In this framework, the purpose of the author's "*magnum opus*" book is to reflect the classical doctrine of EU law including notions, institutions, clarifications, principles,

disciplines. Kelsen, H. (2002). *Introduction to the Problems of Legal Theory*. (Translated by B. L. Paulson & S. L. Paulson) Oxford: Clarendon Press.

⁶ von Bogdandy, A. (2013). "Discourse Theory and International Law: An Interview with Jürgen Habermas." *European Society of International Law*, retrieved from: <[directlink](#)>.

⁷ Gözler, K. (1998). *Hukukun Genel Teorisine Giriş: Hukuk Normlarının Gecerliliği ve Yorumu Sorunu*. Ankara: US-A Yayıncılık. Retrieved from: <[directlink](#)>.

⁸ Wilke, C. (2011). "Introduction to the Law and Legal System of the United States." Heidelberg: Heidelberg University, Faculty of Law. Comparatively, legal system of the USA and the legal system of the EU were argued throughout the seminar. It is worth noting here that mixed jurisdictions in Louisiana (USA), Québec (Canada) and Scotland (UK) enhance the complexity level of various implementations in federal states.

systems, and so forth. The book contains totally 11 chapters and an enriched bibliography. The first and second chapters take up the historical and chronological order of European integration (i.e. declaration of Churchill and Schuman, the montanunion – European Coal and Steel Community [ECSC], European Economic Community [EEC], European Atomic Energy Community [EAEC], Merger Treaty, Single European Act [SEA], Schengen Treaty, Treaty of Maastricht [ToM], Copenhagen Criteria, Treaty of Amsterdam [ToA], Treaty of Nice [ToN], Charter of Fundamental Rights [CoFR], Draft Constitutional Treaty and Lisbon (Reform) Treaty [TEU+TFEU]) and purposes, common values and targets of the EU (i.e. freedom, representative and participatory democracy, minority and human rights, fundamental rights, rule of law, human dignity, pluralism, non-discrimination, tolerance, justice, solidarity, gender equality, consistency, social protection, transparency, respect to diversity, peace, enlargement and so forth). The author shared an overall elaboration of the Treaties of the EU that have objectives of setting up: i) a more democratic and transparent Europe; ii) a more effective Europe; iii) the protection of European Rights, Values and Freedoms based on Solidarity and Security Foundations; and iv) a more efficient Europe in Global Area.

Likewise, chapter two and chapter three are devoted to the legal situations of the Union and Member States, competences of the EU, liability of the Union, the budget of the Union, sources of the Union's law, the characteristics of the Union law, the legal acts of the Union and legislative procedures in the Union's law.

The EU as a supranational (*sui generis*) structure has a legal personality and legal capacity. Thus, supremacy power over sovereignty of Member States is understood by using leading cases of the Court of Justice of European Union (*formerly known as ECJ*) more precisely. Actually, the foundations of EU law can be better conceived by analysing the Court verdicts that are associated to the cases. For instance, *Van Gend & Loos v Nederlandse Administratie Der Belastingen* [C-26/62, 1963]; *Flaminio Costa v Enel* [C-6/64, 1964] and *Simmenthal Spa v Commission* [C-92/78, 1979] cases are relevant to supremacy, traditional concepts of international law, standards of interpretation, quality of EU law, Member States' law and so forth. The most crucial cases related to direct effect of directives are as listed such; *Van Gend & Loos v Nederlandse Administratie Der Belastingen* [C-26/62, 1963]; *Van Duyn v Home Office* [C-41/74, 1975]; *Marshall v Southampton & South-West Hampshire Area Health Authority* [C-152/84, 1986]. Two vital cases about state liability for failing to transform directives are *Francovich & Bonifaci v Italy* [Joined Cases 6-9/90, 1991] and *Facini Dori v Recreb* [C-91/92, 1994]. *Brasserie Du Pecheur & Factortame v Germany* [C-46-48/93, 1996] case without the part on Factortame is associated with state liability for failing to conform to treaty obligations. *Von Colson & Kamann v Land Nordrhein-Westfalen* [C-14/83, 1984] and *Inter-Environnement Wallonie ASBL v Région Wallonne* [C-129/96, 1997] cases are important to understand the duty to interpret national law in the light of EU law, effects of directives during the transposition period. The cases entitled *Procureur Du Roi v Benoît & Gustave Dassonville* [C-8-74, 1974]; *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein (Cassis De Dijon)* [C-120/78, 1979] and *Criminal Proceedings Against Bernard Keck & Daniel Mithouard* [Joined Cases 267-268/91, 1993] have nexuses with free movement of goods; *Alpine Investments BV v Minister Van Financiën* [C-384/93, 1995] and *Ciola v Land Vorarlberg* [C-224/97, 1999] cases are proper to study in frame of freedom to provide services including freedom of establishment. *Union Royale Belge Des Sociétés De Football Association Asbl V Jean-Marc Bosman (Bosman Ruling)* [C-415/93, 1995] and *Angonese v Cassa*

Di Risparmio Di Bolzano [C-281/98, 2000] cases are relevant to free movement of persons. *Criminal Proceedings Against Sanz De Lera & Others* [Joined Cases 163-165-250/94, 1995] and *Staatsecretaris Van Financiën. v B.G.M. Verkooijen* [C-35/98, 2000] cases are related to the free movement of capital.⁹

According to Article 47 of TEU, the Union has legal personality. In each Member States, the Union shall enjoy the most extensive legal capacity – i.e. capacity to rights and obligations, and capacity to exercise rights. Member States of the EU shall take appropriate measures to ensure fulfilment of the obligations arising out of the Treaties and facilitate the achievements of the Union's tasks. They shall refrain from any measure that could jeopardize the attainment of the Union's objectives. Article 5 of TEU and Protocol No.2 provide that the limits of the competences of the Union are governed by the principle of conferral. This means that the Union shall act merely within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. The exercise of the Union's competences shall be governed by the principles of subsidiarity and proportionality.¹⁰

Further, the Union's exclusive, shared, coordinating, and complementary competences, the implied powers and open-ended powers of the Union, contractual and non-contractual liability were examined within the second chapter.¹¹ According to Article 340 of TFEU, the Union's non-contractual liability is subject to EU law. “*In case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties in accordance with the general principles common to the laws of the Member States.*”

Moreover, the author analysed the substantive conditions for “liability actions”; the developments from “Schöppenstedt formula” (pp. 96) to the modern approach “Bergaderm formula” (pp. 97); “Francovich Doctrine” (pp. 98-99); the conditions of the liability and the liability of the Union with its Member States (concurrent liability). In addition, the author explained the issues related to annual budget and multiannual financial framework and he issues of combatting fraud and activities of the “European Office Against Anti-Fraud (OLAF).”

In chapter three, the author clarified the sources of law of the Union, its legal act, the ordinary and special legislative procedures under the Treaties, and general principles of the Union's law. The author clarified primary and secondary law of the Union. Primary law of the Union is composed of the Treaties establishing the EC and the EU, Protocols, agreements concluded by the Union, agreements establishing an association and so on. Secondary law means the legislation made under the Treaties (e.g. regulations, directives, decisions and opinions). Likewise, the author gave information about written and unwritten legal sources of the Union and the soft law (i.e. non-legally enforceable instruments which may aid the interpretation or application of the Union law).

⁹ Voegeli, W. (2010). “Foundation of European Union Law: ECJ Cases” Hamburg: Hamburg University Euromaster Lecture Materials.

¹⁰ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences, *Official Journal C 326, 26/10/2012 P. 0001 – 0390*, retrieved from: <[directlink](#)>.

¹¹ The contractual liability of the Union is governed by the law applicable to the contact in question. In other words, the Union's contractual liability is governed by national law.

The author also mentioned about the principle of direct effect, the principle of supremacy and several methods of interpretation particularly focusing on the teleological interpretation and the rule of “*effet utile*” (efficiency requirement).

The author clarified the legal acts of the Union. In this context, the Union’s legal entities and bodies may adopt regulations, directives, decisions, recommendations and opinions in order to exercise the Union’s competences. The conditions and limits of direct effects of directives were discussed in chapter three.

Furthermore, the author gave a considerable attention to the legislative procedures in the Union’s law. Legal acts adopted by legislative procedure constitute legislative acts. According to Article 290 of the TFEU, “*a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. The objectives, content, scope and duration of the delegation of power ought to be explicitly defined in the legislative acts.*” In such cases the adjective “delegated” should be inserted in the title of delegated acts. The last sub-section of this chapter concentrates on the general principles of the Union law. According to the jurisprudence of the Court of Justice of the EU, the Union’s law is composed not only of Treaties, but also of the general principles of law. The general principles of law comprises general principles adopted by international law, general principles of law common to national laws of all Member States, general principles of law arising out the characteristics of the Union’s law, fundamental human rights, the principles of the supremacy of law and the rule of law. In this framework the author analysed the principles of legal certainty and legal security, the principle of non-retroactivity, the principle of respect for vested rights, proportionality, the principle of sincere or loyal cooperation, principle of equality and rights to be heard, judicial review, legal representation and legal professional privilege (pp. 132-142).

Chapter four is devoted to the fundamental rights in the Union, issues relevant to non-discrimination and citizenship of the Union, area of freedom, security and justice, and enhanced cooperation. The Charter of Fundamental Rights of the EU combines the civil, political, economic, social and societal rights. In addition, the Union acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms (EHRC). Within the scope of application of the Treaties any discrimination on grounds of nationality is prohibited in the Union. The European Parliament and the Council may adopt rules designed to prohibit such discrimination (Article 18, TFEU). Under the Union law, every person holding the nationality of a member state is a citizen of the Union. Citizenship of the Union is additional to national citizenship (Article 70, TFEU). It does not replace the national citizenship of a member state (pp. 145-173).

The author examined the right to move and reside freely within the territory of the Member States; the right to vote and to stand as a candidate at municipal elections; the right to enjoy the protection of the diplomatic and consular authorities; the right to petition to the European Parliament, the right to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union (Article 20, TFEU). “*The Union constitutes an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States*” (Article 67, TFEU). The author clarified policies on border checks, asylum and immigration (Article 77, TFEU), judicial cooperation in

civil matters, judicial cooperation in criminal matters (EUROJUST) and police cooperation (EUROPOL).

The author assessed the enhanced collaboration that aims to further the objectives of the Union, to protect its interests and reinforce its integration process (Article 20, TFEU). Such cooperation shall not undermine the internal market or economic, social and territorial cohesion and shall respect the competences, rights and obligations of those Member States which do not participate. Enhanced cooperation can be established between Member States in one of the areas covered by the Treaties or within the framework of the common foreign and security policy (pp. 170-173).

Chapter five deals with the creation of an internal market characterised by the abolition of obstacles of the free movement of goods, persons and workers, services and capital. “*The Union shall comprise a customs union which shall cover all trade in goods and involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of common customs tariff in their relations with third countries*” (Article 28, TFEU). Similarly, discriminatory internal taxation is prohibited in the Union. No member state shall impose directly (or indirectly) on the products of other Member States any internal taxation of any kind in excess of that imposed on similar domestic products.

The author discussed the issues related to the right of establishment: i) prohibition on national restrictions; ii) Union competence to attain the freedom of establishment; iii) official authority exception for self-employed persons; iv) the right of establishment for companies or firms in the Union (Articles 49-55, TFEU). In principle restrictions on freedom to provide services within the Union are prohibited in respect of nationals of Member States which are established in a Member State other than that of the person for whom services are intended (Article 56, TFEU). Likewise, all restrictions on the movement of capital amongst Member States are prohibited within the Union.

Chapter six outlines the structures, tasks and powers of the institutions and advisory institutions of the Union such as: i) the European Parliament; ii) the European Council; iii) the Council; iv) the European Commission; v) the Court of Justice of the EU; vi) the European Central Bank; vii) the Court of Auditors; viii) the Economic and Social Committee and ix) the Committee of the Regions. Articles 13-19 of the TEU specify the roles of the Union Institutions. Part Six, Title I of the TFEU contains the detailed provisions governing the institutions. In the Union’s structure, there are also some institutions of the Union with specific duties such as the European Investment Bank and the European Parliamentary Ombudsman.

Chapter seven deals with the judicial order and mechanism of the Union (pp. 229-261). In this chapter, the author clarified the organisation and tasks of the European Court of Justice; General Court and the Specialised Courts. The author highlighted the substantive and procedural conditions for enforcement actions, actions against the Union because of the failure to act, annulment actions, damages actions, preliminary rulings and so forth. The Court of Justice of the EU sits in chambers or in a Grand Chamber (Statute of the Court of Justice of the European Union). At present it is assisted by eight Advocates-General (Article 252, TFEU).¹²

¹² “The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and possess the qualifications required for appointment to highest judicial offices in their respective countries” (Article 253, TFEU). The General Court has jurisdiction to hear and determine in actions against the

Enforcement actions against Member States concern the failure of a member state to act in accordance with EU law. The other actions are directed against the Union itself for enforcement of the European Treaties. These actions can be brought for a failure to act, judicial review and damages. Annulment actions deal with judicial review in the Union's legal order. If the action is well founded, the Court of Justice of the EU declares the act concerned to be void (Article 264, TFEU). The Court is not entitled to void national laws that violate Union law. It may merely declare national laws or practices incompatible with the Union law (pp. 443-444).¹³

Chapter eight is devoted to the Union policies and internal actions. These can be listed as such: i) Agriculture and Fisheries; ii) Transport; iii) Approximation of Laws; iv) Economic and Monetary Policy of the Union; v) Employment; vi) Social Policy; vi) Education and Culture Policy of the Union; vii) Public Health Policy of the Union; viii) Consumer Protection; ix) Trans-European Networks; x) Industry Policy of the Union; xi) Economic, Social and Territorial Cohesion; xii) Research, Technological Development and Space Policy of the Union; xiii) Environment Policy of the Union; xiv) Energy Policy of the Union; xv) Tourism Policy of the Union; xvi) Civil Protection Policy of the Union and xvi) Administrative Cooperation.

Chapter nine explores the Union's competition order, competition law and the issues related to aids granted by State. Competition law of the Union is based on two pillars – i.e. the prohibition of cartels and the prohibition of abuse of market dominant position. Under TFEU, all agreements between undertakings, decisions by associations of undertakings and concerned practices which may affect trade between Member States and which have as their object or effect the prevention or distortion of competition within the internal market are prohibited. All cartel agreements or decisions are automatically void (Article 101, paragraph 2, TFEU). However, if some conditions can be met exemption from prohibition can be granted to such cartel agreements or decisions. The author clarified cartel agreements, decisions, concerted practices and the mechanism of individual and block exemptions. The second pillar of the Union's competition law is the prohibition of abuse of market dominance. Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it is prohibited (Article 102, TFEU). The author handled the concept of market dominance; the examples of abuse such as predatory pricing, refusal to supply, discretionary pricing, trying or bundling, mergers and takeovers, the issues related to private enforcement in case of damage caused by prohibited cartel agreements or abuse of market dominance and the aid actions granted by state (pp. 449-450).

Chapter ten focuses on the external relations of the Union and association of the overseas countries and territories. This chapter covers the general provisions on the Union's external action, common commercial policy, cooperation with third countries and humanitarian aid, restrictive measures, internal agreements that may be concluded by the Union, the Union's

Union because of the failure to act; annulment actions; damages actions; actions related to disputes between the Union and its servants. It has also jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union (Articles 256-272, TFEU). Specialised courts have jurisdiction to hear and decide at first instance certain classes of action or proceedings brought in specific areas (Article 257, TFEU).

¹³ Under Article 266 of the TFEU "if an institution whose act has been declared void or whose failure to act has been declared contrary to the Treaties, it shall be required to take necessary measures to comply with the judgement of the Court."

relations with international organisations, and the solidarity clause. The author examined the procedures for negotiation and signing of association agreements as well as other international agreements that may be concluded by the Union. Furthermore, humanitarian aid operations of the Union are concluded with the principles of international law and the principles of impartiality, neutrality and non-discrimination (Article 214, TFEU). Agreements concluded by the Union are binding upon the institutions of the Union and its Member States (Article 216, TFEU). Under solidarity clause, the Union and its Member States shall act jointly in a spirit of solidarity if a member state is the object of a terrorist attack or the victim of a natural or man-made disaster (Article 222, TFEU).

In chapter eleven, the author argued the development stages of negotiations carried out for Turkey's accession to the Union. The author dubiously considers the criteria for accession to the Union applied to Turkey by the Union somewhat different from the criteria that were applied to accession negotiations with former Member States. Thus, the principles of non-discrimination, fairness, justice, equality and openness are seemingly questionable, indeed (pp. 455).

Consequently, referring to a quotation of Paul Valéry will be meaningful.¹⁴ In his modern history sourcebook entitled "*On European Civilisation and the European Mind (1919)*" Paul Valéry denoted that "***We hope vaguely, we dread precisely; our fears are infinitely more precise than our hopes; we confess that the charm of life is behind us, abundance is behind us, but doubt and disorder are in us and with us.***"¹⁵

In the light of these clarifications, time is now for the EU to restructure the whole system and/or its unique mechanism that deactivates the processes which are the (main-stream) sources of internal and external conflicts, disputes and inefficiencies.

ARMANDO ALIU

Istanbul Commerce University (ICU)
armando.aliu@alumni.uni-heidelberg.de

Mr. Aliu holds an M.A. degree in European Studies from the University of Hamburg (GERMANY). He was a postgraduate Scholar at the University of Heidelberg (GERMANY) and an investigator at Max-Planck-Institute for Comparative Public Law and International Law in Heidelberg (GERMANY). Currently, he is a PhD Fellow in the Department of International Commerce and the European Union Law at the Istanbul Commerce University (TURKEY).

¹⁴ Voegeli, W. (2010). "Foundation of European Union Law: Introduction" Hamburg: Hamburg University Euromaster Lecture Materials.

¹⁵ Fordham University (2015). "Modern History Sourcebook: Paul Valéry: On European Civilisation and the European Mind, c. [1919] 1922, New York: Fordham University, retrieved from: <[directlink](#)>.

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<http://www.cvce.eu/en>
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<http://european-convention.europa.eu/>
The Jean Monnet Center for International and Regional Economic Law & Justice
<http://jeanmonnetprogram.org/>
Council for European Studies
<http://councilforeuropeanstudies.org/>
Tenders Electronic Daily (TED)
<http://ted.europa.eu/>
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